IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CRL.A. No.89-DB of 1998**

DATE OF DECISION: October 15, 2007

KRISHAN SON OF TEJU ...APPELLANT

VERSUS

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.
HON'BLE MR. JUSTICE MOHINDER PAL.

PRESENT: MR. RAM BILAS GUPTA, AMICUS CURIE, FOR THE APPELLANT.
MR. S.S. GORIPURIA, DAG, HARYANA.

ASHUTOSH MOHUNTA, J.

The aforesaid criminal appeal has been filed against the judgement and order of sentence dated 15.12.1997, passed by Learned Sessions Judge, Faridabad by which the appellant-accused has been convicted under Sections 376/506 IPC and has been sentenced to undergo imprisonment for life and a fine of Rs.500/- and in default further rigorous imprisonment for 6 months under Section 506 IPC. Both the sentences have been ordered to be run concurrently.

Briefly, the facts of the case are that the prosecutrix, namely, Pooja aged about 7 years was the daughter of Rajinder Kumar (PW-4) and Kamlesh Kumari. The prosecutrix used to reside with her maternal grand-mother Rajwati PW-6 in Gandhi Colony, Faridabad. She used to study in Government Primary School in Ist Class. On 22.1.1997, when the prosecutrix was returning to her home, the appellant-accused Krishan, a

rickshaw puller, tenant of one Leelu Gujar who was earlier known to the prosecutrix was standing on the road. The accused enticed the prosecutrix to the house of Leelu. The appellant-accused after pressing her mouth and threatening to murder her committed forcible rape on her. The prosecutrix reached her home and disclosed the unfortunate incident to her maternal grand-mother and took her father and her grand-mother to the place of occurrence. Thereafter on the statement of Rajinder Kumar PW-4, father of the prosecutrix, an FIR No.92 dated 22.1.1997 under Section 376/506 IPC was registered at Police Station N.I.T., Faridabad against the accused-appellant. Medico-legal examination was conducted on the prosecutrix by Dr.(Mrs.) Beena Sharma (PW-2), B.K. Hospital, Faridabad who opined the possibility of sexual intercourse. The place of occurrence was inspected by PW8 Krishan Chand, Sub Inspector and a piece of Plastic Katta which was besmeared with blood was taken in possession. On the basis of the FIR recorded, the accused-appellant was arrested and he was also medico-legally examined by Dr. A.K. Gupta (PW-1) who opined that the accused-appellant is capable of performing intercourse.

The prosecution examined PW1 Dr. A.K. Gupta, PW2 Dr. (Mrs.) Beena Sharma, PW3 Smt. Kailash Kaur, Head-mistress, PW4 Rajinder Kumar (father of the prosecutrix), PW5 Pooja (prosecutrix), PW6 Rajwati (maternal grand-mother), PW7 Anoj Kumar and PW8 Krishan Kumar, Sub Inspector.

The statement of the accused was recorded under Section 313 Cr.P.C. wherein he denied the allegations of the prosecution and pleaded that he has been falsely implicated.

The trial Court after going through the entire evidence relied on the statements of the prosecutrix, PW-5 as well as the statement of Rajwati PW-6, maternal grand mother of the prosecutrix and held that the appellant Krishan had raped the prosecutrix. The trial Court also relied on the fact that the prosecutrix had identified the accused Krishan. Reliance was also placed on the testimony of PW-2 Dr. Beena Sharma, Medical Officer who had opined the possibility of sexual intercourse with the prosecutrix.

In order to verify the correct age of the prosecutrix, PW2 Dr. (Mrs.) Beena Sharma, Medical officer who medico-legally examined Pooja (Prosecutrix) stated that she was aged about 7 years. PW3 Smt. Kailash Kaur, Head-mistress, Government Primary School, Fathepur Chandela stated that the date of birth of the prosecutrix according to school register is 29.9.1989. In view of the statements made by the above said witnesses it was held that the prosecutrix was 7 years and 4 months of age on the date of occurrence. PW4 Rajinder Kumar, father of the prosecutrix has also stated in his statement that the prosecutrix was aged about 7 years.

Thereafter for verifying the fact that whether the prosecutrix was raped or not PW2 Dr. Mrs. Beena Sharma, Medical Officer opined the possibility of sexual intercourse with the prosecutrix. She has stated that there was a third degree perineal tear 1 cm long and fresh bleeding was present. She further stated that hymen was torn, mucose was torn, fresh bleeding was present and clotted blood was also present. In cross-examination also she has stated that even if semen was not detected on the vagina swab, then also the possibility of sexual intercourse could not be ruled out as the semen might have passed through bleeding. As per the report of the F.S.L., Ex.PH and the report of the Serologist Ex.PH/1 it has

been proved that blood was present on the underwear as well vaginal swabs of the prosecutrix and according to the report of the Serologist, the underwear contained human blood. On the basis of the statements of the witnesses, medico legal examination, laboratory examination it was held by the trial Court that the prosecutrix was raped by the accused-appellant.

Although the girl was only 7 years of age but before examining her, the Sessions Judge had put various questions to her to which she had given intelligent and rational answers. Thereafter, the Sessions Judge has recorded his satisfaction that she is competent to depose and understand the sanctity of oath.

PW5-prosecutrix stated that she was a student of Class I and was studying in Government Primary School. She has categorically stated that Krishan, accused had met her in way while she was coming from school. She has further stated that the accused threatened her with a knife and took her to his house and thereafter had raped her. She had narrated the entire incident to her maternal grand mother as well as well as to her mother. The prosecutrix had also recognized the accused in Court.

PW-6 Rajwati, maternal grand-mother of the prosecutrix had also stated that when the prosecutrix reached her home, she was bleeding. The prosecutrix told PW6 that one boy, namely, Krishan had shown her knife and then closed her mouth and raped her. On interrogation by the Police at 7.00 P.M., the other persons also residing at the place of occurrence also told the police that Krishan-accused who was having white pair of shoes(Jutti) had raped the prosecutrix. The prosecutrix had also identified the accused-Krishan on the basis of white Jutti. But the prosecutrix before identification of the abovesaid persons had earlier told

the name of the accused as Krishan.

PW4, Rajinder Kumar, father of the prosecutrix has also reiterated the same facts as stated by the prosecutrix that she was the student of Ist Class in Government Primary School and was residing with her maternal grand mother. He has further stated that the prosecutrix told that she was picked up by a boy under the threat of knife who had raped her. The prosecutrix had herself taken PW4 and PW6 to the place of occurrence. PW4 also stated that the name of accused Krishan was told by the prosecutrix and not by the Police.

Learned counsel for the appellant contends that there are material discrepancies in the statements of the witnesses. PW6 Rajwati stated in her cross-examination that the prosecutrix went to the Police Station alongwith her but PW4 Rajinder Kumar stated that he had lifted the prosecutrix in his lap and took her to the Police Post. However, PW8 Krishan Chand, Sub Inspector stated that Rajinder Kumar had come alone. It is further contended that PW8 Krishan Chand, Sub Inspector has stated that the place of occurrence was a plot but according to other witnesses, the rape had been committed in the room having a tin roof. It is further contended that PW4 Rajinder Kumar had stated in his statement that he had lifted the prosecutrix in his lap and took her to the police post and then the police accompanied him to the spot and inspected the spot and then recorded his statement at the place of occurrence, whereas in the cross examination he had stated that the FIR was got recorded in the Police Station and the prosecutrix already knew the name of the accused. Learned counsel has further contended that the prosecutrix did not make any statement before PW8 Krishan Chand, Sub Inspector at the first instance of

meeting him. It has been further argued that according to PW1 Dr. A.K. Gupta, the accused-appellant had not suffered any injury on his male organ and if he had committed rape, then being aged 24 years and capable of performing sexual intercourse he must have suffered injuries on the male organ. Learned counsel relies on a judgement in *Mohd. Habib* Versus *State (Delhi)* reported as 1988(2) Recent Criminal Reports 150 in support of the above said contention. Lastly, it is submitted that as per the statement of PW6 Rajwati, 11 boys were apprehended by the police who resided in two rooms in the house of Leelu Gujar and those boys told them as well as the police that the accused-appellant who was having white pair of Jutti raped the prosecutrix. It is further argued that PW6 Rajwati had stated that the prosecutrix had identified the accused-appellant on the basis of white pair of Jutti which he was wearing and thus, the identity of the accused-appellant has not been established.

Learned counsel for the State submits that PW8 Krishan Chand, Sub Inspector had simply stated that the place of occurrence was a plot belonging to Leelu Gujar. He was not further cross-examined whether any construction was there on that plot or not. It is further submitted that when the prosecutrix met PW8 Krishan Chand, Sub Inspector, she was bleeding and was not fit to make any statement. Learned counsel further submits that in *Mohd. Habib's* case (supra), besides absence of injury on the male organ of the accused, there was absence of swelling, redness and inflammation on the female organ and in such circumstances it was held that it pointed out to the innocence of the accused. Whereas in the present case, the prosecutrix has suffered serious injuries on her private parts as there were third degree 1 cm long perineal tear, hymen was torn, mucose was also torn, bleeding was

present and further clotted blood was also present. It is submitted that mere absence of injury on male organ could not lead to his innocence. Learned State counsel further submits that as far as the identity of the accused-appellant is concerned, the name of the accused-appellant was already there in the FIR before identifying him.

As the prosecutrix was only 7 years of age, therefore, the trial Court was of the considered opinion that the accused does not deserve any leniency and accordingly, sentenced the accused to life imprisonment and imposed a fine of Rs.500/- under Section 376 IPC. The accused was also sentenced to 6 months rigorous imprisonment under Section 506 IPC.

We have heard the counsel for the appellant as well as the State at length.

A perusal of the statement of PW-2 Dr. (Mrs.) Beena Sharma, Medical Officer who medico legally examined the prosecutrix shows that she was 7 years of age. A perusal of statement of PW-3 Kailash Kaur, Head-mistress, Government Primary School, Fatehpur Chandela also shows that the date of birth of the prosecutrix as per school register is 29.9.1989 and hence it is held that the prosecutrix was 7 years and 4 months of age on 22.1.1997, when the occurrence took place.

Coming to the next question, i.e. whether the prosecutrix was raped or not, a perusal of statement of PW-2, Dr. (Mrs.) Beena Sharma, Medical Officer shows that the Doctor has opined that there is possibility of sexual intercourse with the prosecutrix. She has categorically stated that there was a third degree perineal tear 1 cm long and fresh bleeding was present. PW-2 has further stated that hymen was torn, mucose was torn, fresh bleeding was present and clotted blood was also present. Apart from

the above, as per the report of FSL, Ex.PH and the report of Serologist Ex.PH/1 it has been proved that blood was present on the underwear as well as vaginal swabs of the prosecutrix. On the basis of the aforementioned evidence it is clear that the prosecutrix was raped.

Now the only question that remains to be determined is was the prosecutrix raped by the appellant? In this regard, the prosecutrix, namely, Pooja has appeared in witness box as PW-5. At the time of her deposition, she was a student of class 3. Before she could depose, the trial Court put various questions to her which were answered by her satisfactorily. The trial Court has observed that "*she has given intelligent and rational answers. I am satisfied that she is a competent witness and also understands the sanctity of oath*". In her statement the prosecutrix has stated that the accused Krishan met her on the way while she was coming from the school. She showed her knife and took her to his house where the accused committed rape upon her. Thereafter she went to the house of her maternal grand mother where she used to live and narrated the incident to her maternal grand mother and mother. Apart from the above, she has categorically stated that "*the accused present in the Court is the same person who had raped me*". The statement of prosecutrix has been fully corroborated by PW-6 Rajwati who is her maternal grand mother. She had stated that on 22.1.1997, the prosecutrix returned home at about 3.00 p.m. and was bleeding from her private parts. The prosecutrix had told her that a person by the name of Krishan had shown her knife and then closed her mouth and had committed rape upon her. She alongwith the prosecutrix and Rajinder had gone to the place where Pooja was raped and blood was lying on a katta. Thereafter they proceeded to the Police Station and lodged the

report. In her cross examination she has also stated that on the same day 11 boys who were living in two rooms in the house of Leelu Gurjar were apprehended and the prosecutrix had recognized the accused who was wearing white pair of shoes (jutti). The prosecutrix had identified Krishan on the day of the incident itself. Thus, from the aforementioned depositions of the prosecutrix as well as her maternal grand mother, there is no doubt that it was the accused-appellant who had committed rape upon the prosecutrix. PW-6 Rajwati has also stated that neither she nor her family members knew the accused. The accused was not on visiting terms with the family of the prosecutrix. Thus, the possibility that the accused could have been implicated falsely is also ruled out as there was no previous enmity with the appellant.

The occurrence took place on 22.1.1997, at about 3.00 p.m. The FIR was recorded at 5.30 p.m. in which the accused had been named. Thus, the chance that the accused was named on mere suspicion is also ruled out. The accused had been identified by the prosecutrix and hence the identity of the accused stands fully established and there is no false implication in this case.

Lastly, it is observed that the occurrence took place on 22.1.1997, at about 3.00 p.m. and the FIR was recorded at 5.30 p.m., i.e. within 2½ hours of the incident and the accused had been named in the FIR. The promptness that the matter was reported by the prosecutrix to her maternal grand mother and her mother, as also to the Police fully supports the case of the prosecution that it was the accused who had committed rape upon the prosecutrix.

In view of the above, the conviction of the appellant under Section 376/506 IPC is upheld.

As far as the question of sentence is concerned, counsel for the appellant has contended that the sentence of imprisonment for life and a fine of Rs.500/- is on the higher side as the accused-appellant has not caused any other injury to the prosecutrix. He has further submitted that the appellant has already undergone more than 5 years of imprisonment. After taking all the facts and circumstances of the case into consideration while upholding the conviction of the appellant under Section 376 IPC, we reduce the sentence of the appellant from imprisonment for life as ordered by the Sessions Judge, Faridabad vide his judgement dated 15.12.1997, to 10 years R.I. alongwith a fine of Rs.500/-. The appellant is also sentenced to undergo 6 months R.I. under Section 506 IPC. However, both the substantive sentences shall run concurrently.

(ASHUTOSH MOHUNTA)
JUDGE

October 15, 2007
Gulati

(MOHINDER PAL)
JUDGE